

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

OCT 11 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Policies and Rules Implementing
the Telephone Disclosure and
Dispute Resolution Act

)
)
)
)
)

CC Docket No. 93-22
RM-7990

COMMENTS OF
THE INTERACTIVE SERVICES ASSOCIATION

Of Counsel:

Robert L. Smith, Jr.
Executive Director
Interactive Services Association
Suite 865
8403 Colesville Road
Silver Spring, MD 20910-3368

301/495-4955
301/495-4959 Fax

William W. Burrington, Esq.
Burrington & Associates
Suite 600
1250 Connecticut Avenue, NW
Washington, DC 20036-2603

202/833-2333
202/833-1234 Fax

Dated: October 10, 1994

No. of Copies rec'd
List ABCDE

110

INTRODUCTION

The Telephone Disclosure and Dispute Resolution Act of 1992 ("the TDDRA" or "the Act")¹ directed the Federal Communications Commission ("FCC" or "Commission") and the Federal Trade Commission ("FTC") to prescribe regulations governing the provision of interstate pay-per-call and related services. On July 15, 1993, the Commission adopted a *Report and Order* amending its pay-per-call regulations consistent with the TDDRA's statutory mandate.² On August 31, 1994, the Commission released a *Further Notice of Proposed Rulemaking* in this proceeding "...to amend [its] regulations to give telephone subscribers greater protection from fraudulent and deceptive practices associated with the use of 800 numbers to provide information services."³

The Interactive Services Association ("ISA"), by counsel, submits these comments regarding the Commission's proposed amended regulations governing 800 presubscribed telephone services. In May, 1994, the National Association for Interactive Services ("NAIS") merged with the ISA. The former NAIS, dissolved as a result of its merger with the ISA, was an active party before the FCC throughout its earlier pay-per-call proceedings.

The ISA is a twelve year old non-profit North American association representing the business and public policy interests of the emerging consumer interactive services industry. The ISA's 300-plus member companies represent the full spectrum of industries active in developing

¹ 47 U.S.C.A. § 228, *et seq.* (West 1991 & Supp. 1994).

² *Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act*, CC Docket No. 93-22, 8 FCC Rcd 6885 (1993).

³ *Order on Reconsideration and Further Notice of Proposed Rulemaking*, CC Docket 93-22, ___ FCC Rcd ___ (1994) ("*Further Notice*").

and delivering telecommunications-based interactive services to consumers. The ISA's members include companies from the advertising, broadcasting, cable television, commercial online, computer, financial services, interactive television, marketing, publishing, telephone, and travel industries. Several ISA members, including many former NAIS members, are actively involved in the interstate pay-per-call industry, either as interexchange carriers, local exchange carriers, service bureaus, information providers, or third party billing entities.

INDUSTRY EFFORTS TO ADDRESS ABUSES OF 800 PRESUBSCRIBED SERVICES

Since January, 1994, the former NAIS and the current ISA have worked hard to address problems associated with the 800 presubscription billing platform. In January, several of our member companies approached the former NAIS about growing complaints associated with the practices of a handful of industry information providers who were abusing the 800 presubscription product. In March, the former NAIS convened a one-day workshop in Washington, DC attended by 45 companies representing all facets of the pay-per-call industry. As a direct result of the March workshop, the former NAIS undertook a lengthy process of developing voluntary industry guidelines designed to curb abuses associated with 800 presubscribed services.

After the mid-May acquisition of the NAIS by the ISA, the effort to address the 800 presubscription problem continued under the leadership of the ISA. In June, 1994, the ISA adopted its *ISA Test Guidelines Governing 800 Presubscription* ("ISA Guidelines"). For the Commission's information, a copy of the ISA Guidelines are attached to our comments as Appendix I. The ISA Guidelines were intended to address the problem of unauthorized access

to certain 800 presubscribed services, and to require a more rigorous process for the creation of a presubscription agreement.

Although the ISA Guidelines received widespread support from ISA members involved in the provision, transport and billing for 800 presubscribed telephone services, the business practices of literally a handful of information providers, particularly those providers offering adult-oriented entertainment services, resulted in continued business and consumer complaints about the 800 presubscription product. While we are grateful to our members for their responsible and proactive efforts to address the problems associated with certain aspects of 800 presubscribed services, the ISA and the pay-per-call industry cannot control the inappropriate business practices of the industry's worst offenders. With the exception of a few important modifications discussed below, the ISA concurs with the FCC's approach to this issue.

SECTION 64.1501(B) WRITTEN CONTRACT REQUIREMENT

We agree generally with the FCC's proposed revision to § 64.1501 so that "presubscription or comparable arrangement means a contractual agreement, executed in writing with a legally competent individual...."⁴ We recognize that by adding a writing requirement to the definition of "presubscription or comparable arrangement," the FCC is contemplating that most presubscription or comparable arrangements will be entered into by legally competent individuals who call an 800 telephone number. Presumably, the consumer will be required to complete and sign a written document evidencing his/her desire to enter into a presubscription or comparable arrangement with the information provider.

⁴ *Further Notice* at Appendix C.

However, because we live in an electronic information age, we urge the Commission to recognize that an increasing number of information services are provided electronically, such as those currently being offered by commercial online services. Many such electronic information services are subscribed to by the consumer dialing an 800 telephone number via a computer modem. While many of today's electronic information services require the consumer to presubscribe online by disclosing a credit or other charge card number for billing purposes, it is possible that future electronic information services will be billed on a consumer's monthly telephone bill. We urge the Commission to define its proposed "writing" requirement narrowly to apply to voice-based information services that utilize 800 telephone numbers for access to such services.

SECTION 64.1501(B)(5) CREDIT OR CHARGE CARD REQUIREMENT

The Commission also proposes to revise § 64.1501(b)(5) of its pay-per-call regulations to require that any credit or charge card disclosed in the course of creating a presubscription or comparable arrangement must be "generally available for the purchase of consumer goods, entertainment, travel and lodging...."⁵ We recognize the Commission's intent to prevent information providers "...from creating instant 'presubscription' by immediately issuing to a caller either a PIN or a 'credit' card that is billed on a monthly telephone bill..."⁶ However, the proposed revision to § 64.1501(b)(5) will effectively prevent the use or future development of private label credit or charge cards by information providers, such as telephone companies,

⁵ *Further Notice* at Appendix C.

⁶ *Further Notice* at para. 29.

commercial online companies, and other providers of interactive services.

We respectfully recommend that the Commission amend its proposed revised language in § 64.1501(b)(5) to read as follows:

Provided, however, that disclosure of a credit or charge card number, along with authorization to bill that number, made during the course of a call to an information service shall constitute a presubscription or comparable arrangement if the credit or charge card is both:

(i) previously issued to the consumer and preapproved by the service provider, and

(ii) subject to the dispute resolution procedures of the Truth in Lending Act and Fair Credit Billing Act, as amended, 15 U.S.C. § 1601 et seq. (emphasis added).

Requiring that the disclosed credit or charge card be "previously issued to the consumer and preapproved by the service provider" will, in our opinion, accomplish the Commission's worthy objective of prohibiting instant presubscription, while at the same time, not preventing the development and use of private label credit or charge cards and "digital cash" by telephone, commercial online and other companies providing presubscribed interactive information services.

SECTION 64.1510(B) EVIDENCE OF PRESUBSCRIPTION AGREEMENT REQUIREMENT

The Commission proposes to revise § 64.1510 of its regulations to require common carriers who bill and collect for presubscribed information services to obtain "evidence that a presubscription or comparable arrangement has been established in accordance with §

64.1501(b)..." prior to billing for such services.⁷ We believe this requirement is poor public policy and places an unfair burden upon common carriers who merely bill and collect for presubscribed information services. We believe strongly that the information provider is the appropriate entity who should bear the responsibility for maintaining and providing "evidence" of valid agreements for their presubscribed information services. Therefore, we ask the Commission to work with the Federal Trade Commission, which has regulatory jurisdiction over information providers, to make the provider of presubscribed services the "keeper of the evidence" of its valid presubscription agreements.

CONCLUSION

We appreciate the opportunity to comment on the Commission's proposed regulations to address the 800 presubscription problem. With the exception of the modifications outlined above, we support fully the FCC's regulatory efforts to protect consumers from the deceptive and fraudulent business practices of a few information providers, whose actions impact negatively on the ability of ISA members and other legitimate industry members to offer value-added interactive information services.

⁷ *Further Notice* at Appendix C.

Respectfully submitted,

INTERACTIVE SERVICES ASSOCIATION

By: 

William W. Burrington, Esq.
Burrington & Associates
Suite 600
1250 Connecticut Avenue, NW
Washington, DC 20036-2603

202/833-1234
202/833-2333 Fax

ISA Public Policy Counsel

Dated: October 10, 1994

Attachment: Appendix I

**ISA TEST GUIDELINES
GOVERNING 800 PRESUBSCRIPTION
July 19, 1994**

I. STATEMENT OF PURPOSE.

The Interactive Services Association ("ISA"), representing the business and public policy interests of the pay-per-call industry endorses, by those companies who chose to do so, testing the voluntary procedures developed by ISA members who were previously NAIS members. The ISA believes in the importance of the long-term viability of the 800 presubscription billing option while at the same time ensuring that consumers are protected.

The industry is very concerned with the growing problem of unauthorized access to certain 800 presubscribed services. For this reason, the former NAIS (recently merged with the ISA) convened the 800 Presubscription Working Group on March 1, 1994 to review the problems associated with 800 presubscription and to develop industry-wide standards governing the current and future use of 800 presubscribed services. The ISA Working Group consists of representatives from the interexchange and local exchange carriers, third party billing entities, service bureaus and information providers.

II. THE PRESUBSCRIPTION EVENT SHALL CONSIST OF THE FOLLOWING REQUIREMENTS:

A. **The Initial Customer Call.** Except as provided in sections III.A and C below, a provider of presubscribed 800 services ("Provider") shall, at the time of the customer's initial call ("Initial Call") to the service, obtain the customer's name, home address, home telephone number and date of birth. In addition, each Initial Call shall be validated against Line Information Data Bases ("LIDB") pursuant to the LIDB requirements set forth in section V below.

B. **Compliance with the Current FCC/FTC Regulations Governing 800 Presubscribed Services.** In order to establish a valid presubscription agreement or comparable arrangement with the customer, the Provider shall:

1. Clearly and conspicuously disclose to its customer all material terms and conditions associated with the use of the Provider's service, including the Provider's name and address, a business telephone number which the customer may use to obtain additional information or to register a complaint, and the rates for the service;

2. Agree to notify the customer of any future rate changes;
3. Obtain the agreement of the customer to utilize the service on the terms and conditions disclosed by the Provider; and
4. Require the use of a personal identification number ("PIN") or other means to prevent unauthorized access of the service.

III. CONFIRMING THE EXISTENCE OF A PRESUBSCRIPTION AGREEMENT.

In addition to complying with the requirements in section II above the Provider shall confirm the existence of a valid presubscription agreement or comparable arrangement through the use of one of the following methods:

A. **Written authorization**, in which the Provider shall obtain:

1. the customer's name, home address, home telephone number and date of birth;
2. a statement that the customer has decided to use the Provider's service;
3. a statement acknowledging the customer's understanding of and agreement with the Provider's terms and conditions of service; and
4. the customer's signature.

Note: This method shall not be subject to the Initial Call requirements set forth in section II.A. A PIN shall not be issued to the caller until written authorization has been received by the Provider from the customer.

B. **Written Notice Mailed/Customer Call Back**, in which the Provider shall:

1. comply with the Initial Call requirements set forth in section II.A;
2. mail a written notice to the customer's home address which confirms the customer's desire to establish a presubscription agreement and provides the customer with a PIN; and
3. require the customer to call back to a 900 number to activate the PIN and to commence billing for the presubscribed service. Providers shall establish one or more 900 numbers for which there shall be no charge to the customer for such

Appendix I

confirmation. During the activation call, which must be made from the customer's home telephone, the customer shall be required to enter the billing telephone number from which he or she is calling, the assigned PIN and his/her date of birth. The Provider shall perform a LIDB look-up during this call back.

C. Direct Mail With Written Notification, in which the Provider shall:

1. mail a promotional piece in a sealed envelope directly to the potential customer which contains a unique PIN assigned to the customer's name and home address;
2. require the customer to call an 800 number to activate the PIN. During the activation call, which must be made from the customer's home telephone, the customer shall be required to enter the information required by section II.A above and the assigned PIN. The caller will not be able to access the Provider's service during the activation call described in this section; and
3. mail a letter to the customer confirming the existence of a presubscription agreement, its terms and conditions, and provide a customer service number for blocking and/or inquiries.
4. After the activation call described in C.2 above, the customer shall be required to call back in order to access the Provider's services.

Note: This method shall not be subject to the Initial Call requirements set forth in section II.A.

D. Electronic or Live Operator Authorization Using a 900 Number.

1. After the Initial Call, allow for electronic or manual authorization that confirms the information described in section II.A. Providers shall establish one or more 900 telephone numbers for which there shall be no charge to the customer for such confirmation. Calls to the 900 number(s) will connect the customer to a voice response unit or a live operator that requires the customer to input the information described in section II.A.

IV. BLOCKING OF 800 PRESUBSCRIBED SERVICES SHALL BE PROVIDED BY THE FOLLOWING MEANS:

- A. A nationwide 800 presubscription blocking database shall be established and added to the required LIDB look-up. Within sixty (60) calendar days from the date that industry users agree upon a billing method for use of the database, customers will be able to use an 800 number to block or unblock their ANI.
- B. The customer mailing piece shall list the telephone number to request blocking of 800 presubscribed services.
- C. All billing entity customer service centers shall provide the customer, upon request, with the telephone number to order blocking of presubscribed services.

V. LIDB REQUIREMENTS AND REJECT CODES.

- A. First time callers shall be bounced against LIDB. If a first time query gives a non-reject code, then that ANI must be checked in increments no longer than seven (7) calendar days since either the last query for that ANI or the last time that ANI attempted (successful or not) to access the Provider's service.
- B. The customer's ANI shall be validated when the billable PIN is activated, regardless of the time between LIDB queries for that customer's ANI. Only one PIN shall be issued per ANI and the billing telephone number ("BTN") and the ANI must match at all times.
- C. All LIDB queries shall request a "collect call verify" format, since there does not currently exist an "information services" LIDB verification request.
- D. A Provider who receives the following unconditional codes from the LIDB response shall reject the ANI:

Unconditional Reject Codes

214 - No Collect Calls
216 - Billed Number Screening (BNS), Public Coin Phone
217 - Billed Number Screening (BNS), Public Non-Coin Phone
218 - Billed Number Screening (BNS), Semi-Public Coin Phone

- E. A Provider who receives the following codes from the LIDB response shall either:

1. reject the ANI; or
2. re-request until:
 - (a) a non-reject code is received;
 - (b) an unconditional reject code is received; or
 - (c) reject because a conditional code set forth below is repeatedly being received.

Conditional Reject Codes

- 201 - BNS, Missing Customer Record (XXXX line check failure)
- 202 - LIDB Missing Group, NPA NXX Check Failure
- 203 - LIDB Destination Point Code Table Failure (local reject)
- 205 - SS7 Network Problem
- 206 - No Host
- 207 - LIDB Access Denied
- 209 - Network Message Error
- 219 - LIDB Response Unrecognized
- 220 - System Error/System Time-Out
- 221 - No Host
- 222 - No Host
- 223 - LIDB Screened Response Error Message
- 224 - LIDB Misroute Error Message
- 225 - LIDB Reject Component Error Message
- 226 - LIDB Component Sequence Error Message
- 227 - SS7 Unitdata Service Message, Network Problem

VI. EFFECTIVE DATE.

The *ISA Test Guidelines Governing 800 Presubscription* shall be effective on or before June 20, 1994. While almost all companies involved in this process have stated their ability to implement the above test guidelines by June 20, a few companies may not be able to fully implement the guidelines until June 27, 1994.

PLEASE NOTE: If you have any questions regarding this document, please contact the Interactive Services Association: Robert L. Smith, Jr., Executive Director (301/495-4955) or Bill Burrington, Esq., Public Policy Counsel (202/833-2333). Thank you.